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Worldwide Plaza
825 Eighth Avenue
New York, New York 10019
Telephone: (212) 474-1000
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*Attorneys for Defendant/Counterclaim-Plaintiff
International Business Machines Corporation*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant/Counterclaim-Plaintiff.

~~PROPOSED~~
**ORDER RE BRIEFING OF PENDING
MOTION**

Civil No. 2:03CV0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

FILED
CLERK U.S. DIST. COURT
2005 FEB 11 P 2:43
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

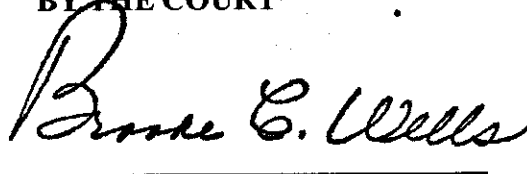
Based upon the stipulation of the parties, and good cause appearing,

IT IS HEREBY ORDERED that IBM shall have until February 18, 2005 to file and serve its Memorandum in Opposition to SCO's Motion to Compel IBM to Produce Samuel J. Palmisano for Deposition.

IT IS FURTHER ORDERED that SCO shall have until March 11, 2005 to file and serve its Reply Memorandum in Support of SCO's Motion to Compel IBM to Produce Samuel J. Palmisano for Deposition.

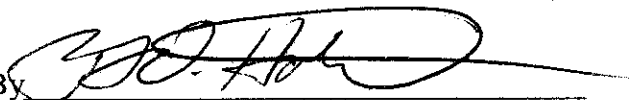
DATED this 11 day of February, 2005.

BY THE COURT



APPROVED AS TO FORM:

HATCH, JAMES & DODGE, P.C.
Brent O. Hatch
Mark F. James

By 

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of February, 2005, a true and correct copy of the foregoing was sent by U.S. Mail, postage prepaid, to the following:

Brent O. Hatch
Mark F. James
HATCH, JAMES & DODGE, P.C.
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100 Southeast Second Street, Suite 2800
Miami, Florida 33131

Robert Silver
Edward Normand
Sean Eskovitz
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, NY 10504



United States District Court
for the
District of Utah
February 11, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00294

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Brent O. Hatch, Esq.
HATCH JAMES & DODGE
10 W BROADWAY STE 400
SALT LAKE CITY, UT 84101
EMAIL

Scott E. Gant, Esq.
BOIES SCHILLER & FLEXNER
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WASHINGTON, DC 20015

Frederick S. Frei, Esq.
ANDREWS KURTH
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WASHINGTON, DC 20006

Evan R. Chesler, Esq.
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ARMONK, NY 10504

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FT LAUDERDALE, FL 33301
EMAIL

Mr. David W Scofield, Esq.
PETERS SCOFIELD PRICE
340 BROADWAY CENTRE
111 E BROADWAY
SALT LAKE CITY, UT 84111
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Mr. Michael P O'Brien, Esq.
JONES WALDO HOLBROOK & MCDONOUGH
170 S MAIN ST STE 1500
PO BOX 45444
SALT LAKE CITY, UT 84145-0444

FILED
CLERK'S DISTRICT COURT

2005 FEB 11 P 2:43

DISTRICT OF UTAH

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

DEPUTY CLERK

THE SCO GROUP, INC.

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant/Counterclaim-Plaintiff.

~~(Proposed)~~
**ORDER RE DEADLINES FOR FILING
PRIVILEGE LOGS AND OBJECTIONS**

Civil No. 2:03CV0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

Based upon the stipulation of the parties, and good cause appearing,

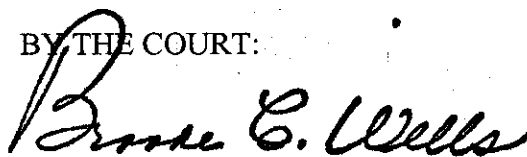
IT IS HEREBY ORDERED as follows:

1. Plaintiff and Counterclaim-Defendant The SCO Group, Inc. ("SCO"), and Defendant and Counterclaim-Plaintiff International Business Machines Corporation ("IBM") shall file and serve their respective privilege logs no later than March 10, 2005.

2. SCO and IBM shall file their respective objections, if any, to the opposing party's privilege log no later than April 9, 2005.

DATED this 11 day of February, 2005.

BY THE COURT:



Honorable Brooke C. Wells
United States District Court Judge

408

APPROVED AS TO FORM:

By:



SNELL & WILMER L.L.P.

Alan L. Sullivan

Todd M. Shaughnessy

Peter H. Donaldson

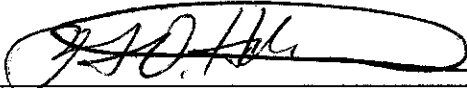
CRAVATH, SWAINE & MOORE

Evan R. Chesler

David R. Marriott

*Counsel for Defendant International
Business Machines Corporation*

By:



HATCH, JAMES & DODGE, P.C.

Brent O. Hatch

Mark F. James

BOIES, SCHILLER & FLEXNER LLP

Robert Silver

Ted Normand

Sean Eskovitz

Counsel for Plaintiff The SCO Group, Inc.

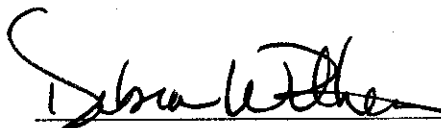
CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of February, 2005, a true and correct copy of the foregoing was sent by U.S. Mail, postage prepaid, to the following:

Brent O. Hatch
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HATCH, JAMES & DODGE, P.C.
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Salt Lake City, Utah 84101

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Robert Silver
Edward Normand
Sean Eskovitz
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, NY 10504



United States District Court
for the
District of Utah
February 11, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00294

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Brent O. Hatch, Esq.
HATCH JAMES & DODGE
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EMAIL

Mr. Michael P O'Brien, Esq.
JONES WALDO HOLBROOK & MCDONOUGH
170 S MAIN ST STE 1500
PO BOX 45444
SALT LAKE CITY, UT 84145-0444

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

FILED
CLERK, U.S. DISTRICT COURT
2004 JUN 11 PM 2:06
DISTRICT OF UTAH
BY
DEPUTY CLERK

UNITED STATES OF AMERICA,
Plaintiff,

v.

LARRY JOE BILBREY,
Defendant.

Case No. 2:04-CR-299 DAK

CONTEMPT ORDER

Pursuant to 28 U.S.C. § 636(e)(2), and Rule 42(b) of the Federal Rules of Criminal Procedure, the Court hereby issues this contempt order.

On May 26, 2004, Defendant's initial appearance, arraignment, and pretrial conference were held. Special Assistant United States Attorney Eric D. Petersen was present at that hearing. At that hearing, the Court informed those present, including Mr. Petersen, that Defendant's detention hearing would be held on May 28, 2004, at 8:30 a.m.

On May 28, 2004, at 8:30 a.m., Defendant's counsel, Defendant, and the United States Marshals were present in the courtroom. Because Defendant was in custody, members of the United States Marshal's Office had been required to transport Defendant from the place where he was being detained to the

29

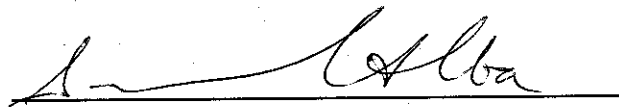
courthouse. Mr. Petersen, who was not present, had not contacted the Court to explain his absence.

After waiting a few minutes, the Court began the detention hearing. The detention hearing lasted approximately five to ten minutes, ending between approximately 8:38 a.m. and 8:43 a.m. Mr. Petersen, who admitted on the record that he was late, arrived at approximately 8:35 a.m.

Because Mr. Petersen was late to the May 28, 2004 detention hearing, the Court imposed a \$50.00 sanction against Mr. Petersen.

DATED this 11th day of February, 2005.

BY THE COURT:

A handwritten signature in cursive script, appearing to read 'S. Alba', is written over a horizontal line.

Samuel Alba
United States Chief Magistrate Judge

United States District Court
for the
District of Utah
February 11, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00299

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Eric D. Petersen, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Robert E. Steed, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

FILED
CLERK U.S. DISTRICT COURT

2005 FEB 11 PM 2:05

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

DEPUTY CLERK

R. DEE ERICKSON,

Plaintiff,

vs.

MERCK & COMPANY, INC., a corporation,

Defendant.

ORDER GRANTING STIPULATED
MOTION TO STAY PROCEEDINGS

Case No. 1:05-CV-00006 PGC

Based upon the stipulated motion submitted by the parties, and good cause appearing therefor, IT IS HEREBY ORDERED that the proceedings in this action are stayed pending resolution by the Judicial Panel on Multidistrict Litigation of Merck & Co., Inc.'s, and plaintiffs' MDL motions.

DATED this 10th day of February, 2005.

BY THE COURT:



Paul G. Cassell
United States District Judge

4

tsh

United States District Court
for the
District of Utah
February 11, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:05-cv-00006

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Mr. Jeffrey Robinson, Esq.
ROBINSON & SHEEN LLC
215 S STATE STE 960
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JFAX 9,3590259

Rick L. Rose, Esq.
RAY QUINNEY & NEBEKER
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PO BOX 45385
SALT LAKE CITY, UT 84145-0385
EMAIL

JOHN J. BORSOS Utah Bar Number 384
JOHN J. BORSOS, P. C.
Attorney for Plaintiff
115 East Social Hall Avenue
P. O. Box 112347
Salt Lake City, UT 84147-2347
(801) 533-8883 FAX (801) 533-8877

FILED
CLERK U.S. DISTRICT COURT
2005 FEB 11 P 2:05
DISTRICT OF UTAH
By: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

RANDY MAW,

Plaintiff,

vs.

JOANNE B. BARNHART, Commissioner,
Social Security Administration,

Defendant.

Civil No. 2:03 CV 859 PGC

ORDER

Based upon Plaintiff's unopposed motion for enlargement of time, and for good cause shown,
IT IS HEREBY ORDERED that Plaintiff may have until February 18, 2005 to file his reply brief.

DATED this 10th of February, 2005.

BY THE COURT:

RECEIVED

FEB - 8 2005

OFFICE OF
JUDGE PAUL G. CASSELL



UNITED STATES DISTRICT COURT JUDGE



tsh

United States District Court
for the
District of Utah
February 11, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00859

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. John J. Borsos, Esq.
PO BOX 112347
SALT LAKE CITY, UT 84147-2347
EMAIL

Scott Patrick Bates, Esq.
US ATTORNEY'S OFFICE
/
EMAIL

FILED
CLERK U.S. DISTRICT COURT

105 FEB 11 P 3:16

DISTRICT CLERK

BY: _____
DEPUTY CLERK

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

HARRINGTON JUNE

Defendant(s),

PRETRIAL ORDER PURSUANT
TO RULE 17.1 F.R.Cr.P.

Case No. 2:05-CR-63 PGC

The above-entitled action came on for pretrial conference **February 4, 2005**, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for **4/13/05**, (3 days) at **8:30 a.m.**. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Paul G. Cassell by **4/12/05** along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

12

3. Pretrial motions are to be filed by: 2/25/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. Plea negotiations should be completed by 3/25/05, the plea deadline. Counsel are directed to meet and confer about the possibility of a plea, and before the deadline report to chambers for the district judge whether the matter will proceed to trial. If negotiations are not completed for a plea by the plea deadline, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: Detained.

7. All exhibits will be premarked before Judge Paul G. Cassell's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes ☐ No ☒ Language _____

DATED this 4 day of February, 2005.

BY THE COURT:



David Nuffer
Magistrate Judge

United States District Court
for the
District of Utah
February 11, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00063

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr Carlos A Esqueda, Esq.
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EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

FILED
CLERK U.S. DISTRICT COURT

2005 FEB 11 P 2:05

Edward M. Garrett, #1173
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Telephone: (801) 581-1144
Facsimile: (801) 581-1168
Attorney for Plaintiff

RECEIVED

FEB - 9 2005

OFFICE OF
JUDGE PAUL G. CASSELL

RECEIVED

FEB - 9 2005

JUDGE'S COPY

IN THE UNITED STATES COURT, DISTRICT OF UTAH
CENTRAL DIVISION

JOHN R. PINDER,
Plaintiff,

vs.

WARDEN CLINT FREIL, SHELBY
HERBERT, CRAIG BALLS, HAZE LOCKE,
ANNIE HOBBS, DENNIS GORDON, BRYCE
DEGIULIO, MARAGARET BRIMHALL,
AND JOHN DOES 1-10,
Defendants.

STIPULATION TO EXTEND TIME FOR
REPLY

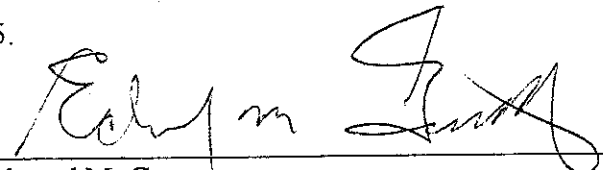
ORDER

Case No.: 2:04-CV-1145 PGC

Judge: Paul G. Cassell

It is Stipulated between the parties hereto through respective counsel that the time for Plaintiff to reply to Defendant's Motion to Dismiss may be extended to and including the 18th day of February, 2005.

DATED this 31 day of January, 2005.


Edward M. Garrett
Attorney for Plaintiff

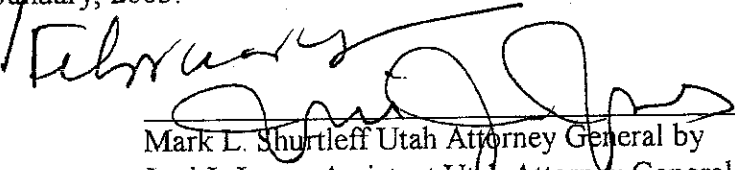
2nd
DATED this ___ day of January, 2005.

SO ORDERED


PAUL G. CASSELL
United States District Judge

Date

2/10/05

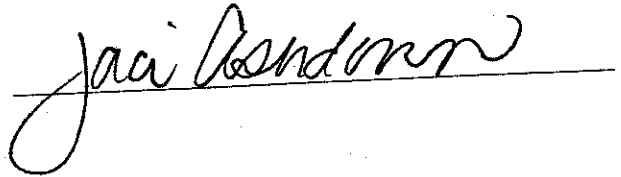
February

Mark L. Shurtleff Utah Attorney General by
Joni J. Jones, Assistant Utah Attorney General

10

CERTIFICATE OF SERVICE

I hereby certify that on this 31 day of January, 2005, a true and correct copy of the foregoing STIPULATION TO EXTEND TIME FOR REPLY was mailed postage pre-paid to the following:

Joni J. Jones
Assistant Utah Attorney General
160 East 300 South, Sixth Floor
PO Box 140856
Salt Lake City, Utah 84114-0856

A handwritten signature in cursive script, appearing to read "Joni J. Jones", is written over a horizontal line.

tsh

United States District Court
for the
District of Utah
February 11, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-01145

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Edward M. Garrett, Esq.
GARRETT & GARRETT
2091 E 1300 S STE 201
SALT LAKE CITY, UT 84108

Joni J. Jones, Esq.
UTAH ATTORNEY GENERAL'S OFFICE
LITIGATION UNIT
160 E 300 S 6TH FL
PO BOX 140856
SALT LAKE CITY, UT 84114-0856
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB 11 P 4: 57

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

BY: _____
DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CRUZ JOAQUIN VISINAIZ,

Defendant.

ORDER OVERRULING
DEFENDANT'S OBJECTION TO
LIFE EXPECTANCY DETERMINATION

Case No. 2:03-CR-00701 PGC

The court previously held a hearing in this homicide case to determine the appropriate amount of restitution. At that hearing, for reasons stated at length in the record, the court concluded that the victim – Ms. Clara Jenkins – would have lived at least another five years had she not been murdered by defendant Cruz Visinaiz. As required by the Mandatory Victim Restitution Act (MVRA),¹ the court therefore awarded restitution in favor of her estate based on the income that Ms. Jenkins would have earned during that period of time.

At the hearing, the court invited Visinaiz to file any supplemental information regarding

¹ See 18 U.S.C. § 3663A; *see also United States v. Bedonie*, 317 F.Supp.2d 1285 (D. Utah, 2004) (MVRA requires lost income award in homicide cases).

or objecting to this calculation. He has now filed a renewed objection and “expert” medical opinion of Dr. Max A. Schneider challenging the five-year life expectancy calculation. According to Dr. Schneider, Ms. Jenkins’ “life expectancy had expired” at the time she was murdered.² Visinaiz accordingly asks the court to reconsider the five-year life expectancy figure.

The court rejects Dr. Schneider’s opinion as not relevant to the issues at hand. Dr. Schneider does not offer any estimate as to how long he believes Ms. Jenkins would have lived but for the murder. He does opine that the court’s estimate of five years was “incorrect,”³ but he never says what *was* correct. Moreover, it is not helpful to learn that Ms. Jenkins “life expectancy had expired.” Obviously, when she was murdered, she had some future life expectancy, be it one hour, one week, one year, or one decade. Dr. Schneider provides no assistance on this point.

Dr. Schneider does contend that Ms. Jenkins use of cigarettes and alcohol would have shortened her life expectancy. The court generally agrees with that conclusion, but already considered that in using a five-year life expectancy rather than the eighteen years urged by the government.

Dr. Schneider also urges the court to discount Ms. Jenkins’ life expectancy because she was a Native-American. The court will not do this. As explained in an earlier opinion, reliance

² See Aff. of Dr. Schneider.

³ See *id.*

on stereotypes is inappropriate.⁴ In this case, the court has an extensive record – developed at trial, in the pre-sentence report, and at sentencing – on how healthy Ms. Jenkins was. For example, the court has reviewed photographs of Ms. Jenkins taken before her death. She seemed to be vibrant and enjoying life – until she was murdered by the defendant.

Based on this factual evidence, by a preponderance of the evidence, the court concludes that the five-year life expectancy is reasonable. Accordingly, the court rejects Mr. Visinaiz's request to alter the restitution calculation made at the restitution hearing.

Mr. Visinaiz's other arguments are also without merit and are rejected.

Accordingly, the court finds that the victim would have earned \$157,800 (60 months x \$2,630/month) for reasons explained at greater length at the restitution hearing. The appropriate discount rate is 7% for reasons explained at the restitution hearing. Using a yearly calculation of \$31,560 per year, and taking judicial notice of the standard present value formula, the present values for lost income at a 7% discount rate are:

1st year - \$29,495

2nd year - \$27,565

3rd year - \$25,762

4th year - \$24,076

5th year - \$22,501

TOTAL \$ 129,399.

⁴*Bedonie*, 317 F.Supp.2d at 1319.


To give the defendant the benefit of the doubt on any computational issues or similar issues, the court will round the award downward to \$100,000.

Accordingly, the defendant is ordered to pay \$100,000, at \$25 per quarter while incarcerated, plus the full amount of any stipend he receives, plus the full amount of any disability payments. Payment at \$200 per month after release from prison. In addition, restitution for funeral expenses as previously ordered, to be paid after the \$100,000 in restitution is paid.

A judgment will enter to this effect today.

SO ORDERED

Dated this 14 day of February, 2005.



Paul G. Cassell
U.S. District Judge

tsh

United States District Court
for the
District of Utah
February 11, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cr-00701

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr Carlos A Esqueda, Esq.
US ATTORNEY'S OFFICE
,
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Diana Hagen, Esq.
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,
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Mr. Cy H Castle, Esq.
US TRUSTEE'S OFFICE
9 EXCHANGE PLACE STE 100
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SALT LAKE CITY, UT 84111
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Theodore R. Weckel, Esq.
275 E S TEMPLE STE 301
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

United States District Court
District of Utah
11 P 4: 57
DISTRICT OF UTAH

UNITED STATES OF AMERICA

vs.

Cruz Joaquin Visinaiz

AMENDED JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: 2:03-cr-00701-001 PGC

Plaintiff Attorney: Carlos Esqueda

Defendant Attorney: Ted Weckel

Atty: CJA ☒ Ret ☐ FPD ☐

Defendant's Soc. Sec. No.: _____

Defendant's Date of Birth: _____

Defendant's USM No.: 10871-081

Defendant's Residence Address:
none

Country USA

11/16/2004
Date of Imposition of Sentence

Defendant's Mailing Address:
same

Country USA

THE DEFENDANT:

- ☐ pleaded guilty to count(s)
☐ pleaded nolo contendere to count(s)
which was accepted by the court.
☒ was found guilty on count(s)

COP _____ Verdict 08/26/2004

1 of the Indictment

Title & Section

18 USC §§ 1111(a) and
1153(a)

Nature of Offense

Murder in the Second Degree While Within Indian
Country

Count

Number(s)

1

Entered on docket

2/11/05 by:

BT
Deputy Clerk

- ☐ The defendant has been found not guilty on count(s) _____
☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of
262 months

Upon release from confinement, the defendant shall be placed on supervised release for a term of
60 months

- ☐ The defendant is placed on Probation for a period of _____
The defendant shall not illegally possess a controlled substance.

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For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant shall maintain full-time, verifiable employment or participate in academic or vocational development throughout the term of supervision as deemed appropriate by the probation office.
2. The defendant shall refrain from incurring new credit charges or opening additional lines of credit unless he is in compliance with the established payment schedule and obtains the approval of the probation office.
3. The defendant shall provide the USPO office access to all requested financial information.
4. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defer the costs of collection and testing.
5. The defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the United States Probation Office.
6. The defendant shall participate in a mental health treatment program under a co-payment plan, as directed by the probation office.
7. The defendant shall not consume alcohol
8. The defendant shall submit his person, residence, office or vehicle to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of conditions of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches, pursuant to this condition.

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of \$ _____, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:
No Fine Imposed

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), **it is ordered that:**
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
Utah State Office of Crime Victim Reparations Attn: Allan Hedberg CVR Claim No. 134232 350 East 500 South, #200 Salt Lake City, UT 84111	\$7,000.00	\$7,000.00
The Estate of Clara Jenkins	100,000.00	100,000.00
Totals:	\$ <u>107,000.00</u>	\$ <u>107,000.00</u>

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☒ Restitution is payable as follows:

☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☒ other:

\$25.00 a quarter while incarcerated, plus the full amount of any stipend he receives, plus the full amount of any disability payments. Payment at \$200.00 a month upon his release from incarceration. Upon completion of the award to Ms. Jenkins estate, \$100 per month payable to the Office of Crime Victims Reparation.

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00, payable as follows:

☒ forthwith.

☐ _____

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

DEPARTURE

The Court grants the Motion for Departure pursuant to 18 U.S.C. 3553(c)(2), the Court enters its reasons for departure: the court finds that *Blakely* is not mandatory in this case. If *Blakely* is found to be unconstitutional, the court recommends a sentence of 262 months.

RECOMMENDATION

☒ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

Washington/Oregon to facilitate family visitation.

Defendant: Cruz Joaquin Visinaiz
Case Number: 2:03-cr-00701-001 PGC

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CUSTODY/SURRENDER

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.
- ☐ The defendant shall report to the institution designated by the Bureau of Prisons by _____ Institution's local time, on _____.

**SUPPLEMENTAL STATEMENT OF REASONS
APPLICABILITY OF THE FEDERAL SENTENCING GUIDELINES**

- ☐ The court applied the Guidelines and all relevant enhancements in this case.
- ☐ The court found the Guidelines unconstitutional in part, and imposed a sentence in accordance with the constitutionally applied portions of the Guidelines.
- ☒ The court did not apply the federal sentencing guidelines at all in this case and imposed a discretionary sentence.
- ☐ The court took some other action (Please explain below.):
- ☐ This judgment includes an alternative sentence.
- ☒ The court finds that the application of the sentencing guidelines to this defendant is not permitted by *Blakely v. Washington*. Therefore, the sentence in this judgment is a non-guideline sentence. Should the sentencing guidelines later be found to be constitutional, it will be judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of **262 months. The court has imposed its main sentence by using the Guidelines as purely advisory. For its backup Guidelines sentence, the court denies the defendant's motions for downward departure. The court is aware that it has the authority to depart, but finds that the factual circumstances of this case do not justify a departure. Mr. Markman's affidavit provides no new information to the court, since it is merely a second-hand recounting of what a juror thought of the trial evidence -- the same evidence the court heard. Dr. Podboy's affidavit is speculative and, in any event, provides no good grounds for departure. The grounds cited by the defendant -- victim's conduct and the defendant's vulnerability to violence in prison -- are not in any way atypical.**

All other terms and conditions of the judgment will remain the same.

- ☐ The court finds that the application of the sentencing guidelines to this defendant is permitted by *Blakely v. Washington*. Therefore, the sentence in this judgment is a guideline sentence. Should the sentencing guidelines later be found to be unconstitutional in their entirety, it will be the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of _____.
- All other terms and conditions of the judgment will remain the same.

DATE: 2/11/05



Paul Cassell

United States District Judge

Defendant: Cruz Joaquin Visinaiz
Case Number: 2:03-cr-00701-001 PGC

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RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

United States District Court
for the
District of Utah
February 11, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cr-00701

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr Carlos A Esqueda, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Diana Hagen, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Mr. Cy H Castle, Esq.
US TRUSTEE'S OFFICE
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United States Marshal Service
DISTRICT OF UTAH
,
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US Probation
DISTRICT OF UTAH
,
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